



**CITY OF NEWPORT, OREGON
GOODS AND SERVICES AGREEMENT**

THIS AGREEMENT is between the City of Newport, an Oregon municipal corporation (City), and **Doug Wilson Construction, Inc** (Contractor). This Agreement shall be effective on the date last signed by a party below (Effective Date).

RECITALS

- A. Contractor represents it has the training, ability, knowledge, and experience to provide services desired by the City; and
- B. City selected Contractor to provide services, consistent with its public contracting rules.

1. SERVICES TO BE PROVIDED

- A. Contractor will provide the services described in RFP attached and included in the contract as Exhibit C (hereinafter "Services").
- B. In the course of providing Services under this Agreement, Contractor may have contact with the public. Contractor will maintain good relations with the public. The City may treat the failure to maintain good relations with the public as a non-curable breach of this Agreement and may disqualify Contractor from future work for the City.

2. COMPENSATION & TIMEFRAME

Contractor shall be compensated as described in Exhibit B. Unless otherwise set forth in Exhibit C, Contractor shall begin Services on the Effective Date and shall complete Services no later than such date set forth in Exhibit C or as agreed upon in writing by the parties.

3. STATUS OF CONTRACTOR

Contractor certifies that:

- A. Contractor is an independent contractor as defined by ORS 670.700 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of the finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of the finding.
- B. Contractor is not an officer, employee or agent of the City as those terms are used in

ORS 30.265.

- C. No employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection this Agreement, except as specifically declared in writing.
- D. Contractor currently has a City business license or will obtain one prior to delivering Services under this Agreement.

4. WARRANTY & INDEMNIFICATION

- A. City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor warrants that all its work will be performed with good workmanship and in accordance with generally accepted professional practices and standards of the industry in which Contractor operates as well as the requirements of applicable federal, state and local laws. Contractor's work will conform to the requirements of this Agreement. Acceptance of Contractor's work by City shall not operate as a waiver or release of this warranty.
- B. Contractor is fully liable for the acts and omissions of Contractor and Contractor's subcontractors which cause any damage, injury, death, property damage or loss to any person or property.
- C. Contractor will indemnify and defend the City, its officers, agents, employees and volunteers and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this Agreement. Contractor's indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, the illegality or invalidity shall not affect the validity of the remainder of this indemnification.

5. INSURANCE

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this Agreement. The insurance shall cover all activities of the Contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier.

The policy or policies of insurance maintained by the Contractor and its subcontractor shall provide at least the following limits and coverages:

A. Commercial General Liability Insurance

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include

Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

Coverage	Limit
General Aggregate	\$1,000,000
Products-Completed Operations Aggregate	\$1,200,000
Personal & Advertising Injury	\$1,200,000
Errors & Omissions	\$1,200,000
Each Occurrence	\$1,200,000
Fire Damage (Any one fire)	\$50,000
Medical Expense (Any one person)	\$5,000

B. Commercial Automobile Insurance

Contractor shall also obtain, at Contractor's expense, and keep in effect during the term of the contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,200,000.

C. Workers' Compensation Insurance

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract that are either subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers or employers that are exempt under ORS 656.126. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

D. Additional Insured Provision

The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City as an additional insured with respect to this Agreement.

E. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage of Contractor's insurance without 30 days prior written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days prior notice of cancellation to the City

F. Certificates of Insurance

As evidence of the insurance coverage required by the Agreement, the Contractor shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates have been received and approved by the City. The certificate will

specify and document all provisions within this Agreement. A renewal certificate will be sent to the City 10 days prior to coverage expiration.

G. Primary Coverage Clarification

The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

H. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in all general liability, professional liability, pollution and errors and omissions policies required by this Agreement.

The procuring of required insurance shall not be construed to limit Contractor's liability under this Agreement.

6. METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND PAYMENTS

Unless otherwise set forth herein, payment to Contractor shall be made by City within thirty (30) days of receipt of an approved invoice. An approved invoice is an invoice that has been signed by an authorized City individual. Payment may be withheld in the event the Services performed or an invoice submitted is disputed by the City. All notices, bills and payments shall be made in writing and may be given by personal delivery mail. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices and other information:

City: Melissa Román
City of Newport
169 SW Coast Highway
Newport, Oregon 97365
Phone: 541.574.3377

Contractor: Doug Wilson
Doug Wilson Construction, Inc
2125 Fairmount Blvd
Eugene, OR 97403
541.342.5249

Notices mailed to the address provided for notice in this section shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery.

7. TERMINATION WITHOUT CAUSE

At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Contractor. If City terminates the Agreement pursuant to this Section due to no fault of Contractor, City shall pay Contractor for all approved and undisputed services rendered up to the date of termination.

8. TERMINATION WITH CAUSE

- A. City may modify or terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:

1. If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services.
2. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the Services are no longer allowable or appropriate under this Agreement.
3. If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the Services required by this Agreement is for any reason denied, revoked, or not renewed.
4. If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.

Any such termination of this Agreement under subsection A will be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

B. City, by written notice to Contractor, may terminate the whole or any part of this Agreement:

1. If Contractor fails to provide Services as set forth in this Agreement within the time specified herein or any extension thereof, or
2. If Contractor fails to perform any provisions of this Agreement, or fails to pursue the work of this Agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.

The rights and remedies of City provided in this Section are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. If City terminates this Agreement under Section, Contractor shall be entitled to receive as full payment for all Services actually satisfactorily rendered and expenses incurred, provided however, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of this Agreement by Contractor.

9. ACCESS TO RECORDS

For a period of not less than three years after City's final payment to Contractor, Contractor shall permit the City, the State of Oregon and the Federal Government (if State or Federal funding is involved) to have access to all books, documents, papers and records of Contractor which are pertinent to the Services provided hereunder for purposes of audit, examination, excerpts and transcripts. Contractor shall retain those records for at least three years, or until litigation is resolved if litigation is instituted.

10. FORCE MAJEURE

Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, an act of nature or of a public enemy, civil unrest, earthquake, fire, flood, epidemic, quarantine restriction, strike, freight embargo, unusually severe weather; provided that the parties so disenabled shall notify the other party in writing of the cause of delay. Each party shall make reasonable efforts to remove or eliminate the

cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under the Agreement.

11. NON-DISCRIMINATION

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

12. ERRORS

Contractor will perform additional work as may be necessary to correct errors in Services performed under this Agreement without undue delay and without additional cost.

13. GOVERNING LAW

The provisions of this Agreement shall be construed in accordance with the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement will be brought in the appropriate court of the State of Oregon. In any action arising under this Agreement, the losing party shall pay such sum as the court may adjudge including reasonable attorney fees and court costs.

14. COMPLIANCE WITH LAWS AND RULES

Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapter 279, some provisions of which are attached to this Agreement as Exhibit B.

15. CITY OWNERSHIP

All Contractor's work product accomplished under this Agreement, whether in the form of designs, drawings, as-builts, diagrams, specifications, reports, or other writings, shall become the exclusive property of the City. The City is the owner of any copyrights thereto, upon City's final payment to Contractor.

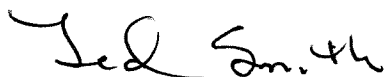
The term "work product", as used within this Section 15, includes all equipment and service rendered hereunder, but does not include designs, drawings or other writings, or portions thereof, created by or for Contractor prior to the date of this Agreement ("Pre-Existing Materials"). For Pre-Existing Materials which may be incorporated or embodied in the Contractor's work product, Contractor hereby grants the City a perpetual, non-revocable, exclusive, royalty-free, worldwide, sub-licensable, unrestricted license to use such Pre-Existing Materials in exchange for the compensation provided by City to Contractor pursuant to Section 2 of this Agreement. Nothing in this paragraph shall prevent Contractor or others from using the general design concepts, approaches, and techniques employed by Contractor in completing its work product in the course of future business.

16. AGREEMENT

- A. This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. This Agreement incorporates the City's Request for Proposal/Solicitation of Bids document and Contractor's Response/Bid. In the event of a conflict between the terms of this Agreement and any incorporated document, unless otherwise specifically stated, this Agreement will control.
- B. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties. Payment shall not be made for any Services not set forth in Exhibit B without the written agreement with the City. In the event Contractor and City agree to any modification in the Services set forth in Exhibit B, the parties will execute an amendment to this Agreement, reflecting such modification.
- C. Neither party shall assign or transfer any interest in or duty under this Agreement without the written consent of the other party.
- D. This Agreement and all exhibits and addenda hereto are complementary and what is required in one shall be binding as if required by all. If there is a conflict between terms of the documents, the more specific requirement shall govern over the more general. No term of this Agreement is intended to waive or supersede a legally mandated term of this Agreement under ORS Chapter 279, 279A, 279B, and 279C, and Administrative Rules promulgated to implement those ORS Chapters.
- E. The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

By authorized signature hereunder, each party sets their hand to this Agreement:

CITY OF NEWPORT:



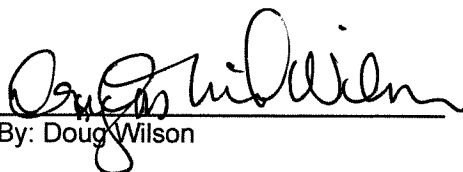
By: ~~Spencer Nebel~~, City Manager

Ted Smith, Acting

1-14-2014

Date

CONTRACTOR:



By: Doug Wilson

1-10-2014

Date

EXHIBIT A

ORS CHAPTER 279B PUBLIC CONTRACTING REQUIREMENTS FOR THE PURCHASE OF GOODS AND SERVICES

- (1) Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor. ORS 279B.220(1).
- (2) Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract. ORS 279B.220(2).
- (3) Contractor shall not permit any lien or claim to be filed or prosecuted against the Contracting Agency on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted. ORS 279B.220(3).
- (4) Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.617. ORS 279B.220(4).
- (5) Contractor agrees that if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the City may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Contractor or his surety from his or its obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or material furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.
- (6) Contractor shall promptly, as due, make payment to any person, copartnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. ORS 279B.230(1).
- (7) All subject employers working under the Contractor are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126. ORS 279B.230(2).
- (8) Contractor shall pay employees for overtime work performed under the contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 USC 201, et seq). ORS 279B.235(3).
- (9) The Contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a

notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work. ORS 279B.235(2).

- (10) All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid. ORS 701.430.
- (11) The contract may be canceled at the election of City for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.
- (12) Contractor certifies compliance with all applicable Oregon tax laws, in accordance with ORS 305.385.
- (13) Contractor certifies that it has not discriminated against minorities, women or emerging small business enterprises in obtaining any required subcontractors. ORS 279A.110.
- (14) As used in this section, "nonresident contractor" means a contractor that has not paid unemployment taxes or income taxes in the state of Oregon during the 12 calendar months immediately preceding submission of the bid for the contract, does not have a business address in this state, and stated in the bid for the contract that it was not a "resident bidder" under ORS 279A.120. When a public contract is awarded to a nonresident contractor and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. ORS 279A.120.

EXHIBIT B
RATES

TO: CITY OF NEWPORT
Public Works Department
169 SW Coast Highway
Newport, OR 97365

DATE: Oct 8, 2013

Installation of Meyer Constellation Acoustic Enhancement System in Alice Silverman Hall, Newport Performing Arts Center, Newport, Or., Meyer Sound Project #4588, Oct 2, 2013.

Additions: As approved

Exclusions: Man Lift

Cost: **\$288,086.00** for materials and labor

Terms: 50% downpayment at contract signing. Pricing confirmed to February 8, 2014. Additional work to be performed on a time and materials, cost plus (15%) basis.

All work to be completed in a professional manner according to standard practices. Any alteration or deviation from the above specifications involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, acts of God or delays beyond our control.

Acceptance of this Proposal

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Ed Smith
Owner/Representative

1-14-2014
Date

Doug Wilson
Doug Wilson Construction, Inc.

10-8-13
Date

MEYER SOUND

Constellation Acoustic Enhancement System

PROPOSAL

GEORGE RELLES SOUND REINFORCEMENT INC.
 2021 Kincaid St
 Eugene, Oregon 97405
 541 686 9325

CLIENT: CITY OF NEWPORT
 Public Works Dept
 169 SW Coast Hwy
 Newport, Oregon 97365

VENUE: NEWPORT PERFORMING ARTS CENTER
 ALICE SILVERMAN HALL
 Newport, Or

Terms:	50% Deposit 2/8/14	Date:	10/8/2013
Invoice number:		Service number:	
Cost estimate:	\$288,086.00	Date completed:	

PARTS AND MATERIALS

PART NO.	QTY.	PARTS DESCRIPTION	PRICE	AMOUNT
	1	Meyer Sound Constellation Equipment (See BOM Addendum)	\$252,980	252,980.00
	1	Tripp Lite Smart Pro Smart 1500CRMXL 1500 VA Online Uninterrupted 120V Power Supply	\$800	800.00
	1	APB Dynasonics Mix Switch C	\$607	607.00
	1	Apple iPad mini	\$350	350.00
	1	Apple Mac Mini computer	\$599	599.00
	1	Installation Materials	\$9,500	9,500.00

Total parts and materials: **\$264,836.00**

EXPENSES

	QTY	DESCRIPTION	COST	AMOUNT
	1	Meyer Services (See BOM Addendum)	\$35,000	\$35,000.00
	1	Installation Labor	\$35,000	\$35,000.00
	1	Per Diem	\$2,000	\$2,000.00
	1	Transportation/ Travel Time	\$1,000	\$1,000.00
		Lodging: to be provided by OCCA	N/C	
	1	Shipping Charges	\$3,250	\$3,250.00
	1	Meyer Galileo 408 Credit	(\$3,000)	(\$3,000.00)

Total Expenses: **\$73,250.00**

IN KIND DONATION: **(\$50,000.00)**

Total Amt: **\$288,086.00**

EXHIBIT C
REQUEST FOR PROPOSAL

REQUEST FOR PROPOSAL
City of Newport

ELECTRONIC ACOUSTIC ENHANCEMENT SYSTEM
– Newport Performing Arts Center –

NEWPORT, OR
2013

REQUEST FOR PROPOSALS

Pursuant to City Rule 137-047-0260, the City of Newport (City) is conducting a formal selection procedure for an ELECTRONIC ACOUSTIC ENHANCEMENT SYSTEM for the Newport Performing Arts Center. The City plans to award to the highest ranked proposer selected from those acoustic sound companies submitting proposals. The anticipated contract will include all equipment, transportation, installation, and acoustic adjust of final set up.

The full Request for Proposals, including the contract terms, conditions, and specifications, may be downloaded from the ORPIN.oregon.gov website until October 8, 2013 or obtained from:

Name: Melissa Román
Title: Engineering Technician
Department of Public Works
169 SW Coast Highway
Newport, OR 97365
Telephone: 541-574-3377
Email: m.roman@newportoregon.gov

Proposals will be received by the City until closing, 5:00 pm, October 8, 2013. Responses received after this time will be rejected as non-responsive. Proposers shall submit proposals in a sealed opaque envelope, plainly marked "**Request for Proposals for Electronic Acoustic Enhancement System**" to Public Works Director, Tim Gross, at the above address. Prequalification is not required. Faxed and emailed proposals will be rejected as non-responsive.

<p style="text-align: center;">Section I Request for Proposals</p>
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The City of Newport (City) intends to select an ELECTRONIC ACOUSTIC ENHANCEMENT SYSTEM, as described in Section II, Project Description, from among proposers who respond to this Request for Proposals. The City intends to enter into a contract, in the form attached as Appendix A, with the selected company after negotiating a maximum not to exceed dollar amount. The contract amount will include all equipment, delivery, installation, and acoustic adjustment of final set up.

Proposal clarifications or additional information requested by City must be provided by Proposer within 24 hours of request, excluding weekends and holidays.

<p style="text-align: center;">Section II Project Description and Scope of Work</p>

The City of Newport (City) is located on the central Oregon Coast at the mouth of the Yaquina River. The City has around 10,000 permanent residents. The Performing Arts Center (PAC) is located at 777 W Olive St, Newport, OR 97365 in the Nye Beach District. The PAC has two performances spaces, the Alice Silverman Theatre and the Studio Theatre. The Silverman is a 398-seat, proscenium, stage theatre with a full range of technical capabilities.

ELECTRONIC ACOUSTIC ENHANCEMENT SYSTEM

PART 1 - GENERAL

1.01 SUMMARY OF THE WORK

- A. Scope: Design, provide, install, and adjust an electronic, acoustic enhancement system for the "House Seating" area in the Alice Silverman Theatre at the Newport Performing Arts Center, Newport, Oregon. Provide a separate additional fee for the additive-alternate (a system for on-stage, acoustic enhancement).
- B. Types of equipment to be installed for this system specification include (but are not limited to) :
 - 1) Amplification equipment.
 - 2) Signal processing equipment.
 - 3) Microphones
 - 4) Loudspeakers
 - 5) Interconnecting cable.
 - 6) Accessory equipment.
 - 7) Electrical power conditioning.

1.02 QUALITY ASSURANCE AND STANDARDS

- A. Work shall be accomplished by a Specialty Contractor with mechanics skilled in the sound enhancement trade who has been involved in the manufacture and installation of sound reinforcement systems for a period of at least five years.
- B. Before starting work, surfaces and attachments to receive work within this section shall be inspected per Part 3.
- C. Coordinate work with all other trades affecting, or affected by, work. Cooperate with such trades to assure steady progress of all work under Contract.
- D. Guarantee and Service:
 - 1) Contractor shall warrant systems and equipment to be free of defective components, faulty workmanship or improper adjustment for a period of one year from the date of Owner's acceptance. Paint and exterior finishes and fuses are excluded.
 - 2) Warranties on new manufactured equipment shall be designated to the Owner on the date of system acceptance.
 - 3) Contractor shall provide, at his expense, maintenance service for a period of one year after final acceptance of the installation.
 - 4) Contractor shall respond to all service calls within twenty-four hours of a request.
- E. All goods and services provided must meet the highest standards prevalent in the industry or business most closely involved in providing the goods and services the City is purchasing.

1.03 RESPONSIBILITIES OF CONTRACTOR

- A. Contractor shall design the acoustic enhancement system, furnish, install and adjust all equipment and materials, and comply with all provisions of the Contract Agreement.
- B. Contractor shall coordinate design with Owner in determining 1) location of equipment racks, 2) provision of electrical power to the equipment, and 3) installation of conduit and cable, as required.
- C. Contractor will coordinate installation scheduling with Owner's upcoming event requirements and availability of performance users for final, live tuning of the acoustic enhancement system.
- D. Contractor shall schedule, coordinate and receive systems equipment delivery at job site, including the handling and on-site storage of systems equipment prior to installation.
- E. Notwithstanding the information contained in this specification, it is the responsibility of Contractor to supply working overall systems. Contractor shall be responsible for the overall suitability of the equipment meeting the main purposes of the specification.

1.04 ALTERNATES

- A. Scope of Alternate Work: Extend the design of the acoustic enhancement system to include the on-stage area, especially for the hearing of musicians, for microphone pick-up and reproduction of voice and musical instrument sound to the House from all locations on the stage
- B. Procedures

- 1) Provide a separate, additional fee for alternate work.
- 2) Coordination: Modify or adjust affected adjacent work to completely integrate work of the alternate stage system with that of the rest of the theatre system. Any additional equipment needed to meet the requirements stated above, even if not specifically mentioned in the original bid proposal, shall be supplied by Contractor without claim for additional payment.
- 3) Execute alternate under the same conditions as other contract work.

1.05 SUBMITTALS

A. Proposal Submittals

- 1) Proposals shall include all work and all equipment as specified in any category, complete with all parts and fittings.
- 2) Unless otherwise stated by Contractor at time of submittal, the design and installation Fee shall be assumed to be for the systems as specified, without exception. This shall indicate that Contractor can design, install and take full responsibility for the operation and performance of the system as specified herein.
- 3) No sub-contracting of work shall be permissible unless Sub-Contractor is named and included as part of proposal. All terms of this contract, including bidding and qualification requirements, shall apply to the Sub-Contractor on the basis of any of these terms.

B. Shop Drawings and Samples:

- 1) Submit two copies of system design shop drawings to Owner for review prior to commencement of installation. Review of drawings shall be complete prior to proceeding with equipment purchase and fabrication of system.
- 2) The following drawings and/or details shall be provided for approval prior to fabrication:
 - a) One-line, interconnection drawing of the proposed system and components.
 - b) Loudspeaker assembly and support.
 - c) Loudspeaker arrangement (location) within reflected ceiling plan or floor plan drawings.
 - d) Catalog or data sheets for all major components of the system.
- 3) All shop drawings shall be made in conformity with the best modern practice.
- 4) Review of shop drawings, and said approval does not mean that shop drawings have been checked in detail, and said approval does not in any way relieve Contractor from his responsibility or necessity of furnishing material or performing work as required by this specifications
- 5) Failure by Contractor to submit shop drawings in ample time for review shall not entitle him to an extension of contract time, and no claim for extension by reason of such default will be allowed.

C. Final Submittals

- 1) Within thirty days of Acceptance Tests, Contractor shall furnish the following:

- a) Two copies of 1-line functional diagram of the system giving essentials of the installation and their functional relations.
- b) Two copies of a complete instruction, operation and maintenance book, including all block diagrams, wiring diagrams, sizes, and technical descriptions of components.

1.05 DELIVERY, STORAGE AND HANDLING:

- A. All equipment shall be delivered to job site only after storage facilities are available to protect the equipment prior to installation. Contractor shall coordinate with authorized personnel at the project site for the receipt of components being shipped. The requirements for safe handling and storage of these components shall be coordinated between these two parties. Delivery shall include unloading equipment onto vehicle and transportation to final destination within the building. Delivery shall be authorized only when site conditions provide mechanical, electrical, and weather protection.
- B. Equipment shall be placed in sturdy containers to provide mechanical protection during shipping and storage. Provide padding, etc., as necessary to protect equipment from vibration and shock.
- C. Inner plastic sheeting shall be provided to protect the equipment from moisture and dust. Fabricated and assembled equipment shall be wrapped and sealed in polyethylene and substantial boxes for shipment. Standard components shall be shipped in manufacturer's original packing. Boxes shall clearly indicate equipment contained, "front", "top", "fragile" labels, nature of components and site location. Such covers shall be kept on control equipment until broom cleaning has been completed.
- D. Where use of inflammable padding material is essential, containers shall so indicate.

1.06 PUBLICATION:

- A. Written approval from Owner shall be obtained prior to the release of any information concerning Project.

PART 2 - PRODUCTS

2.01 GENERAL REQUIREMENTS

- A. All materials and components shall be new and of manufacturer's finest quality. Uniform materials and components shall be used throughout, and wherever possible, shall be field replaceable and commonly available.
- B. All new internal wiring shall be laced and neatly bundled; internal wiring shall be 600 volt, factory installed, color coded and clearly marked.
- C. All exteriors shall be mechanically safe and electrically dead.
- D. Pressure connections shall be fully crimped or screwed except as required for field installation. Provision for field connections shall be only by pressure connections or plug fittings for 120 volt connections. Direct wiring and/or field soldering or wire nuts shall not be acceptable.

2.02 PERFORMANCE REQUIREMENTS

- A. Acoustic Enhancement System:
 - 1) Certain overall performance requirements of the electronic acoustic enhancement system may be checked by measurement during Acceptance Testing (Part 3).

Contractor shall be responsible for design, installation, and conformance of each component of the system specified, with the manufacturer's specifications.

- 2) Overall spatial uniformity of sound coverage shall be +/-6 dB for "direct" sound of any individual, "virtual" sound reflection signal, between any two seats in the theatre, which may be measured by TEF system by Gold-Line, Smaart system by Rational Acoustics, or, other such measuring equipment.
- 3) Frequency response of the reproduced, individual system element signals shall be 20 - 18,000 Hz, or, as required for acceptable reproduction of the acoustic enhancement effect being targeted by the design element.
- 4) Residual noise and hum shall be below the ambient noise level.
- 5) Design system configuration for flexibility in extending the system at a later date to include the stage area for addition pick-up of sound by microphones, and for acoustic enhancement throughout the stage area for musicians.

2.03 DESCRIPTION OF SYSTEMS

A. Manufacturers:

- 1) The accepted acoustic enhancement system shall be the product of a single manufacturer, designed for adaptation to the Alice Silverman Theatre. Potentially acceptable manufacturers of the acoustic enhancement system include, but are not limited to, the following: Meyer Sound Constellation, System for Improved Acoustic Performance (SIAP), Lexicon Acoustic Reinforcement and Enhancement System (LARES), Yamaha's Active Field Control (AFC), ACS systems (by Acoustic Control Systems BV).

B. Loudspeaker and Associated Equipment:

- 1) The loudspeakers shall be attached such that they will maintain their precise location and orientation after the system has been adjusted.
- 2) Loudspeakers shall be easily removable and replaceable in the same position.
- 3) Each loudspeaker shall be held secure and shall not vibrate loose during operation.
- 4) Design of support arrangement shall be submitted to Owner for approval prior to fabrication/installation. Contractor is responsible for any additional hardware as required for proper installation of loudspeaker.

C. Acoustic Enhancement System Capabilities

- 1) The Electronic, Acoustic Enhancement System shall include microphones, digital signal processors, equalizers, audio power amplifiers, and loudspeakers as required to provide acoustic coverage of all seating areas of the theatre.
- 2) The Electronic Acoustic Enhancement System shall include the capabilities of:
 - a) Provision of increased acoustic "reverberation" effect according to the needs of the performance presentation. Needs of drama, choral, chamber music, jazz, and symphony will be addressed at the minimum.
 - b) Provision of sound arriving with a delay but within approximately 200 milliseconds after the "direct" sound in order to simulate "early reflected" sound for music presentations. "Early reflected" sound signals with various

delays and frequency contours should be provided throughout this time zone, as necessary, to produce "spatial impression" effects including 1) broadening of the "Apparent Source Width", and 2) "Envelopment" of the listener, as currently defined by the acoustics community

- c) Loudspeaker locations should be provided to achieve "lateral" (left-right) directionality for the "early reflected" sound to enhance the effect of "apparent source width" for music presentations.
 - d) The determination of, and electronic storage of, "Preset" adjustments of all acoustic enhancement parameters that can be "recalled" to instantly effect the change in acoustics enhancement need as program use of the theatre requires. Presets shall include "Drama", "Choral Music", "Jazz Music", "Chamber Music", "Symphony Music", and any other settings as determined by Owner.
 - e) Provide a user interface, agreed upon with Owner, allowing 1) selection of any desired system preset, and time schedule programming; 2) adjustment of parameters as necessary for operation of the preset (if any); 3) simple system check to verify functionality of system.
- 3) An adequate number of loudspeakers shall be provided and arranged so as to achieve the spatial uniformity of the acoustic enhancement at all seats.
 - 4) The acoustic enhancement system shall be fully adjustable in all acoustic characteristics including delay time, frequency equalization, and loudness. Loudness of all signals shall be adjustable in steps of +/- 1 dB or less.
 - 5) Associated equipment and any user control interface panels shall be located as agreed to by Owner.
 - 6) Acoustic enhancement system shall be designed in consideration of all theatre structure and finish surface materials that may affect sound reflection, or sound.
 - 7) Installation of loudspeakers shall include any needed bracket reinforcement to achieve secure support without overloading any support structure.
 - 8) All equipment shall meet UL requirements as required for its type by the City of Newport.
 - 9) Power amplifiers shall be of adequate power to provide acceptable reproduction of sound to all loudspeakers without distortion for the full operating range of the system + 3 dB.
 - 10) Any additional equipment needed to meet the requirements stated above, even if not specifically mentioned in the original bid proposal, shall be supplied by Contractor without claim for additional payment.

PART 3 - EXECUTION

3.01 INSPECTION

- A. Examine all locations to receive work in this Section and report any defects which may affect installation to Owner for correction or adjustment.
- B. Commencement of work will be construed as complete acceptance of existing

conditions.

3.02 INSTALLATION - GENERAL

- A. All equipment shall be held firmly in place. This shall include loudspeakers, cables, control equipment, etc. Fastenings and supports shall be adequate to support their loads with a safety factor of at least three.
- B. All switches, jacks, outlets, cables, etc. shall be clearly, logically and permanently marked during installation. All cables shall be marked with standard alphanumeric markers at each end.
- C. The Contractor shall take such precautions as are necessary to prevent and guard against electromagnetic/electrostatic/radio frequency interference.

3.03 INSTALLATION - CABLE

- A. Care shall be exercised in wiring so as to avoid damage to the cables and to the equipment. Between system components and loudspeakers, all cables shall be well supported and shall be neatly dressed. All joints and connections shall be made with mechanical connectors approved by Owner.
- B. All cable to be installed, exposed or above ceilings, shall meet applicable UL and City of Newport requirements for such location-rated equipment.

3.04 SYSTEM TESTS AND INITIAL ADJUSTMENTS

- A. Perform initial tests and adjustments. Furnish all equipment necessary and perform all work required to determine or modify the performance of the sound system in accordance with the specifications. Prior to tuning the acoustic enhancement system, Contractor shall carry out the following.
 - 1) Verify signal flow through the entire system.
 - 2) Measure and record the polarity of all loudspeakers.
 - 3) Measure and record the polarity of all system microphones.
 - 4) Check all microphone lines and interconnecting cable for correct wiring and shorts to ground.
 - 5) Check remote controls for operation functionality.
 - 6) Establish the initial level, frequency and delay settings for all acoustic signal types.
 - 7) All controls shall be adjusted for optimum signal-to-noise ratio, signal balance and evenness of sound level throughout the project area.
 - 8) Prior to Calibration and Tuning, use a sweeping sine wave at the systems input to check loudspeaker installation for extraneous noise, i.e. buzz, vibration, etc. Even coverage of system should be confirmed. If coverage problems are observed, attempt to improve or even coverage by re-aiming loudspeakers.

3.05 CALIBRATION AND TUNING

- A. System Adjustments
 - 1) Provide all calibration and tuning required to fully adjust all parameters of the acoustic enhancement system in order to achieve acoustic requirements of Owner.
 - 2) Adjust system time delays, reverberation enhancement, frequency response and

levels of all acoustic enhancement signals appropriate to determine the optimum acoustic enhancement conditions for each program use, i.e., drama, choral, jazz, chamber ensemble, symphony, etc.

- 3) Record all settings for each preset.
 - 4) Make all adjustments as required to control possibility of "feedback" throughout the full loudness range of the system for each pre-set.
 - 5) Determine and set all "presets" of the system operation as agreed upon with Owner.
 - 6) At the conclusion of the initial calibration and tuning, record all settings for each acoustic signal type included in the mix for each preset condition.
- B. Upon completion of checkout and initial tuning of the system, notify Owner in writing that systems are ready for inspection and live performance tuning. Written notice of inspection readiness shall be at least three days prior to the date of live performance tuning.

3.06 ACCEPTANCE TESTING AND FINAL TUNING

- A. Demonstrate operation of each component, and of combined operation, to the acoustic enhancement system to satisfaction of Owner, or, designated Owner representative.
- B. Make final acceptance tuning adjustments of the system with live performance on stage in the presence of the Owner's Review Representative. If live performer tests cannot be provided by all performance types in the same time frame, arrange to return and make the same adjustments for the remainder of the programmed uses at one other owner agreed-upon period when the other live performers are available.
- C. In case the need for further adjustments becomes evident during the live performance tuning, the Contractor's work shall be continued until the systems operate properly. If final acceptance is delayed beyond the above two time periods, Contractor shall pay for all time and expenses of the Owner's Review Representative during any extensions of the acceptance testing period.
- D. When final acceptance testing and tuning has concluded to Owner's satisfaction, Contractor shall submit a written request for Final Acceptance. Guarantees, warranties and service contracts will commence upon written notification of Final Acceptance by Owner.

3.07 INSTRUCTION

- A. Within two working weeks of system acceptance, Contractor shall provide training for system operation for persons designated by Owner. A minimum of four hours of training, at mutually acceptable times, shall be provided.

3.08 FINAL ACCEPTANCE

- A. The following conditions must be met before Final Acceptance can be granted:
 - 1) Approval of final tests and inspections.
 - 2) Submittal of record drawings and operating manuals.

3.09 WORKMANSHIP

- A. Installation of all work shall be neat. All boxes, equipment, etc., shall be plumb and

square.

- B. Any damage brought about by Contractor's work shall be repaired by Contractor at no cost to Owner.

3.10 CLEANING

- A. Following Installation, all soiled, abraded or discolored surfaces of work installed herein shall be cleaned and left free from blemishes or defects.
- B. Clean areas affected by Work to a level of operational cleanliness.
- C. Remove all debris as required by Contract Documents.
- D. Uncover all areas protected during fabrication. Dispose of covering material and debris off-site.
- E. Remove all extraneous debris from areas where work was performed.
- F. Contractor shall remove from the job site all rubbish and refuse at the end of each day and shall keep work area clean.

Section III Anticipated Solicitation and Contract Performance Schedule

Anticipated Solicitation Schedule:

Proposal Advertisement: September 4, 2013
Proposals Due to Public Works: October 8, 2013, 5 PM
Proposals Reviewed: November 8, 2013
Negotiation of Price: December 6, 2013
Contracts Completed: January 10, 2013

It is anticipated that installation of the ELECTRONIC ACOUSTIC ENHANCEMENT SYSTEM will be completed mid-summer 2014. Contract shall supply installation, adjustment and training schedule for review on acceptance of proposal.

Section IV No pre-proposal meeting will be held for the New Acoustic System
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Section V Submittal Information
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One original and three copies of each proposal are to be received at the City office by **5:00 pm. on October 8, 2013**. Emailed and/or faxed proposals will be rejected as non-responsive. Any late proposals cannot be considered and will be returned unopened. Send or deliver the proposals to: Public Works Department, 169 SW Coast Highway, Newport, OR 97365.

<p style="text-align: center;">Section VI Instructions to Proposers</p>

Please note the following specific requirements for submitted proposals:

1. The City may modify this RFP via addenda before the proposal due date. Please check the City's website, <http://newportoregon.gov/dept/pwk/biddocuments.asp> for updates. Receipt of all addenda must be acknowledged in submitted proposals.
2. Proposers responding to this RFP do so solely at their expense. The City is not responsible for any proposer's expenses associated with responding to this RFP.
3. Proposers are directed to the solicitation protest procedures as set forth in the City Rules 137- 047-0730, and the award protest procedures at City Rule 137- 047-0740.
4. Each proposal must include the information set forth in Section VII, Proposal Requirements, and address the criteria by which the proposals will be evaluated and ranked, set forth in Section VIII, Proposal Evaluation.
5. FIVE (5) copies of the proposal are to be supplied. One set of Signed Originals shall be included and clearly identified as such.

<p style="text-align: center;">Section VII Proposal Requirements</p>
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Proposal shall include, at a minimum, the following items:

1. Introductory Letter. Each proposal shall include an introductory or cover letter. Proposers may use this section to introduce the proposal and the key provisions of the submittal.
2. The name of the person(s) authorized to represent the responding in negotiating and signing any agreement which may result from the proposal.
3. Name and qualifications of the individual who will serve as the Contractor.
4. The names of the individuals who will assist the Project Manager in performing the work and a current résumé for each, including a description of qualifications, skills, and responsibilities. The City is interested in proposers with experience serving small governmental entities and especially serving Cities comparable in size to 10,000. The City is also interested in proposers with experience planning for and designing projects similar to the New Electronic Acoustic Enhancement System.
5. Submittal of a proposal in response to this RFP evidences proposer's agreement that, in performing the work called for by this proposal and in securing and

supplying materials, proposer has not and will not discriminate against: 1) any person on the basis of race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin or ancestry unless the reasonable demands of employment are such that they cannot be met by a person with a particular physical or mental handicap; and 2) a subcontractor in the awarding of a subcontract because the subcontractor is a minority, woman, or emerging small business enterprise certified under ORS 200.055, or a business enterprise that is owned or controlled by, or that employs a disable veteran as defined in ORS 408.225.

6. Proof of insurance for a minimum of \$1.3 million liability insurance, plus \$1.3 million comprehensive and automobile liability insurance. Proof of coverage by Workers' Compensation Insurance or exemption.
7. A list of the tasks, responsibilities, and qualifications of any subconsultants proposed to be used on a routine basis and proof of adequate liability insurance for any subconsultants.
8. The names and current phone numbers of individuals representing three owners, to be used as references. References from public works projects are preferred. Please verify that the references identified had direct contact with your proposed team members.
9. Confirmation that the proposer is licensed to work in the State of Oregon and the City of Newport.
10. Confirmation that the proposer will make available the necessary personnel for this work. This should include the proximity of personnel to the City, and affirmation that such personnel can respond to City inquiries and/or be onsite within a maximum of 24-hours.
11. Warranty information for labor and equipment.
12. Contact names, addresses and phones for three references from similar size and type of projects.
13. The following statement: "*The contractor accepts all the terms and conditions contained in the Request for Proposals and that this proposal shall be considered valid for 120 days after the submission deadline.*"
14. The following statement: "*All materials and documents acquired or produced by the contractor in conjunction with a resulting contract shall be delivered to and become property of the City of Newport without restriction or limitation of their future use.*"
15. Support Information: Proposer may provide supporting material that it believes will assist the Selection Committee in the decision process. Only relevant information should be submitted. Items that may be included in the Appendix as support material include: Graphs and figures, Additional references, Project

photos, Insurance certificate. If the consultant does not wish to include support information in the Appendix, please include a page indicating that "No additional support material has been provided."

<p style="text-align: center;">Section VIII Proposal Evaluation</p>

A. Evaluation Criteria

The City shall apply the following criteria in making a recommendation to the Council for the award of the contract. The criteria are listed from the most to least desirable, and the proposal will be evaluated accordingly.

The first item that will be looked at is the delivery date. Proposals that meet this criteria will then be graded on the points system listed below. If no proposal meets the delivery date, the City may, in its sole discretion, eliminate delivery date as a criteria and rank proposals on the remaining weighted criteria.

		<u>Points</u>
1.	Introductory Letter	(Pass/Fail)
2.	Does proposal meet specification	(100)
3.	Equipment Quality	(100)
4.	Warranty Provisions	(50)
5.	References	(50)
6.	Proposer availability and capability to supply and perform the needed goods and services described in this RFP.	(20)
7.	Proposer's key staff experience with public projects of similar size and complexity.	(20)
8.	Proposer's experience with private projects of similar type.	(20)
9.	Proposer's demonstrated ability to successfully complete similar services on time and within budget, including Proposer's record of satisfactory performance. This includes the number of change orders in Proposer's last three projects that were not initiated by Owners. Provide Owner's business name and contact information.	(20)

- | | | |
|---------------|--|-------------------|
| 10. | Project Understanding. Communicated understanding for each project category declared. Acknowledged information specific to Newport. Proposer showed ability to synthesize technical information and communicate this information in verbal, written or graphic form. Described how the project team will interact with City staff and what level of support will be anticipated or expected from the City. | (30) |
| 11. | The methodology proposer would use in approaching this project. At a minimum, provide an estimate of the amount of time needed to complete each major task, and a preliminary schedule of major elements. | (20) |
| 12. | Proposer's familiarity with City of Newport and Lincoln County permitting procedures and regulations, and Proposer's geographic proximity to the project site. | (20) |
| 13. | Amount and type of resources and number of experienced staff Proposer has within Proposer's firm available to perform the design, installation and related services described in this RFP within the applicable time limits. This includes the current and projected workloads of such staff and the proportion of time such staff would have available for architectural or related services, without the need for Proposer to subcontract for that work. | (20) |
| 14. | Proposer's public safety track record. | (15) |
| 15. | Results from interviews, if conducted. | (15) |
| TOTAL: | | 500 Points |

B. Evaluation Process

Proposals will be initially screened pursuant to the following minimum qualifications:

1. Proposer is an established manufacturer of Electronic Acoustic Enhancement Systems.
2. Proposer's ability to provide the acoustic enhancement system needed by City to the standards required by the City, County and State.
3. Whether Proposer has the financial resources for the performance of the desired design, construction and installation services, or the ability to obtain such resources.
4. Proposer is an Equal Opportunity Employer and being otherwise qualified by law to enter into the professional services agreement.

Once the initial screening process is completed, the remaining proposals will be evaluated

under the criteria and weights accorded in Section VIII.A above. If the City deems it desirable, the City may elect to interview one or more of the top candidates.

If the City and the selected candidate are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the City, the City shall, either orally or in writing, formally terminate negotiations with the selected candidate. The City may then negotiate with the next most qualified candidate. The negotiation process may continue in this manner through successive candidates until an agreement is reached or the City terminates the RFP.

It is the desire of the City to have a new Electronic Acoustic Enhancement System contract in place no later than January 3, 2014.

Section IX Miscellaneous

The City reserves the right to: 1) Seek clarifications of each proposal; 2) Negotiate a final contract that is in the best interests of the City and the public; 3) Reject any or all proposals or cancel this RFP at any time if doing either would be in the public interest, as determined by the City in its sole discretion; 4) Award the contract to any proposer based on the evaluation criteria set forth in this RFP; 5) Waive minor informalities contained in any proposal, when, in the City's sole judgment, it is in the City's best interest to do so; 6) Request any additional information City deems reasonably necessary to allow City to evaluate, rank and select the most qualified proposer to perform the services described in this RFP; and 7) Delay or suspend this RFP when in the City's best interest, as determined in City's sole discretion.

The services and responsibilities set forth in this RFP, together with any other documents required herein, shall be included in the contract executed by the successful proposer, as indicated in the attached contract form. Any open terms in the attached contract will be completed based upon City negotiation and awardee's proposal. Submittal of a proposal indicates a proposer's intent to execute the attached contract terms and be bound thereby.

Section X Contact Information

Direct all inquiries regarding the New Electronic Acoustic Enhancement System and this RFP to:

Name & Title:	Melissa Román, Engineering Tech
Address:	Public Works Department 169 SW Coast Highway Newport, OR 97365
Email:	m.roman@newportoregon.gov
Telephone:	541-574-3377
Fax:	541-265-3301

Section XI Appendices

The following appendices are included in this RFP:

Appendix A: DRAFT Goods and Services Contract

**APPENDIX A
CITY OF NEWPORT, OREGON
GOODS AND SERVICES AGREEMENT
DRAFT**

THIS AGREEMENT is between the City of Newport, an Oregon municipal corporation (City), and _____ (Contractor). This Agreement shall be effective on the date last signed by a party below (Effective Date).

RECITALS

- A. Contractor represents it has the training, ability, knowledge, and experience to provide services desired by the City; and
- B. City selected Contractor to provide services, consistent with its public contracting rules.

1. SERVICES TO BE PROVIDED

- A. Contractor will provide the services described in RFP attached and included in the contract as Exhibit C (hereinafter "Services").
- B. In the course of providing Services under this Agreement, Contractor may have contact with the public. Contractor will maintain good relations with the public. The City may treat the failure to maintain good relations with the public as a non-curable breach of this Agreement and may disqualify Contractor from future work for the City.

2. COMPENSATION & TIMEFRAME

Contractor shall be compensated as described in Exhibit B. Unless otherwise set forth in Exhibit C, Contractor shall begin Services on the Effective Date and shall complete Services no later than such date set forth in Exhibit C or as agreed upon in writing by the parties.

3. STATUS OF CONTRACTOR

Contractor certifies that:

- A. Contractor is an independent contractor as defined by ORS 670.700 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of the finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of the finding.
- B. Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265.

- C. No employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection this Agreement, except as specifically declared in writing.
- D. Contractor currently has a City business license or will obtain one prior to delivering Services under this Agreement.

4. WARRANTY & INDEMNIFICATION

- A. City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor warrants that all its work will be performed with good workmanship and in accordance with generally accepted professional practices and standards of the industry in which Contractor operates as well as the requirements of applicable federal, state and local laws. Contractor's work will conform to the requirements of this Agreement. Acceptance of Contractor's work by City shall not operate as a waiver or release of this warranty.
- B. Contractor is fully liable for the acts and omissions of Contractor and Contractor's subcontractors which cause any damage, injury, death, property damage or loss to any person or property.
- C. Contractor will indemnify and defend the City, its officers, agents, employees and volunteers and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this Agreement. Contractor's indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, the illegality or invalidity shall not affect the validity of the remainder of this indemnification.

5. INSURANCE

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this Agreement. The insurance shall cover all activities of the Contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier.

The policy or policies of insurance maintained by the Contractor and its subcontractor shall provide at least the following limits and coverages:

A. Commercial General Liability Insurance

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

Coverage	Limit
General Aggregate	\$1,000,000
Products-Completed Operations Aggregate	\$1,200,000
Personal & Advertising Injury	\$1,200,000
Errors & Omissions	\$1,200,000
Each Occurrence	\$1,200,000
Fire Damage (Any one fire)	\$50,000
Medical Expense (Any one person)	\$5,000

B. Commercial Automobile Insurance

Contractor shall also obtain, at Contractor's expense, and keep in effect during the term of the contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,200,000.

C. Workers' Compensation Insurance

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract that are either subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers or employers that are exempt under ORS 656.126. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

D. Additional Insured Provision

The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City as an additional insured with respect to this Agreement.

E. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage of Contractor's insurance without 30 days prior written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days prior notice of cancellation to the City

F. Certificates of Insurance

As evidence of the insurance coverage required by the Agreement, the Contractor shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this Agreement. A renewal certificate will be sent to the City 10 days prior to coverage expiration.

G. Primary Coverage Clarification

The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

H. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in all general liability, professional liability, pollution and errors and omissions policies required by this Agreement.

The procuring of required insurance shall not be construed to limit Contractor's liability under this Agreement.

6. METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND PAYMENTS

Unless otherwise set forth herein, payment to Contractor shall be made by City within thirty (30) days of receipt of an approved invoice. An approved invoice is an invoice that has been signed by an authorized City individual. Payment may be withheld in the event the Services performed or an invoice submitted is disputed by the City. All notices, bills and payments shall be made in writing and may be given by personal delivery mail. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices and other information:

City: City of Newport
169 SW Coast Highway
Newport, Oregon 97365
Business Phone: 541-574-3377

Contractor: _____

Notices mailed to the address provided for notice in this section shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery.

7. TERMINATION WITHOUT CAUSE

At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Contractor. If City terminates the Agreement pursuant to this Section due to no fault of Contractor, City shall pay Contractor for all approved and undisputed services rendered up to the date of termination.

8. TERMINATION WITH CAUSE

- A. City may modify or terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:
1. If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services.
 2. If federal or state regulations or guidelines are modified, changed, or interpreted in

such a way that the Services are no longer allowable or appropriate under this Agreement.

3. If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the Services required by this Agreement is for any reason denied, revoked, or not renewed.
4. If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.

Any such termination of this Agreement under subsection A will be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

B. City, by written notice to Contractor, may terminate the whole or any part of this Agreement:

1. If Contractor fails to provide Services as set forth in this Agreement within the time specified herein or any extension thereof, or
2. If Contractor fails to perform any provisions of this Agreement, or fails to pursue the work of this Agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.

The rights and remedies of City provided in this Section are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. If City terminates this Agreement under Section, Contractor shall be entitled to receive as full payment for all Services actually satisfactorily rendered and expenses incurred, provided however, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of this Agreement by Contractor.

9. ACCESS TO RECORDS

For a period of not less than three years after City's final payment to Contractor, Contractor shall permit the City, the State of Oregon and the Federal Government (if State or Federal funding is involved) to have access to all books, documents, papers and records of Contractor which are pertinent to the Services provided hereunder for purposes of audit, examination, excerpts and transcripts. Contractor shall retain those records for at least three years, or until litigation is resolved if litigation is instituted.

10. FORCE MAJEURE

Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, an act of nature or of a public enemy, civil unrest, earthquake, fire, flood, epidemic, quarantine restriction, strike, freight embargo, unusually severe weather; provided that the parties so disenabled shall notify the other party in writing of the cause of delay. Each party shall make reasonable efforts to remove or eliminate the cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under the Agreement.

11. NON-DISCRIMINATION

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

12. ERRORS

Contractor will perform additional work as may be necessary to correct errors in Services performed under this Agreement without undue delay and without additional cost.

13. GOVERNING LAW

The provisions of this Agreement shall be construed in accordance with the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement will be brought in the appropriate court of the State of Oregon. In any action arising under this Agreement, the losing party shall pay such sum as the court may adjudge including reasonable attorney fees and court costs.

14. COMPLIANCE WITH LAWS AND RULES

Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapter 279, some provisions of which are attached to this Agreement as Exhibit B.

15. CITY OWNERSHIP

All Contractor's work product accomplished under this Agreement, whether in the form of designs, drawings, as-builts, diagrams, specifications, reports, or other writings, shall become the exclusive property of the City. The City is the owner of any copyrights thereto, upon City's final payment to Contractor.

16. AGREEMENT

- A. This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. This Agreement incorporates the City's Request for Proposal/Solicitation of Bids document and Contractor's Response/Bid. In the event of a conflict between the terms of this Agreement and any incorporated document, unless otherwise specifically stated, this Agreement will control.
- B. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties. Payment shall not be made for any Services not set forth in Exhibit B without the written agreement with the City. In the event Contractor and City agree to any modification in the Services set forth in Exhibit B, the parties will execute an amendment to this Agreement, reflecting such modification.
- C. Neither party shall assign or transfer any interest in or duty under this Agreement without the written consent of the other party.

- D. This Agreement and all exhibits and addenda hereto are complementary and what is required in one shall be binding as if required by all. If there is a conflict between terms of the documents, the more specific requirement shall govern over the more general. No term of this Agreement is intended to waive or supersede a legally mandated term of this Agreement under ORS Chapter 279, 279A, 279B, and 279C, and Administrative Rules promulgated to implement those ORS Chapters.
- E. The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

By authorized signature hereunder, each party sets their hand to this Agreement:

CITY OF NEWPORT:

By: Ted Smith, Interim City Manager

Date

CONTRACTOR:

By: Contractor's Name

Date

EXHIBIT A

ORS CHAPTER 279B PUBLIC CONTRACTING REQUIREMENTS FOR THE PURCHASE OF GOODS AND SERVICES

- (1) Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor. ORS 279B.220(1).
- (2) Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract. ORS 279B.220(2).
- (3) Contractor shall not permit any lien or claim to be filed or prosecuted against the Contracting Agency on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted. ORS 279B.220(3).
- (4) Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.617. ORS 279B.220(4).
- (5) Contractor agrees that if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the City may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Contractor or his surety from his or its obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or material furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.
- (6) Contractor shall promptly, as due, make payment to any person, copartnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. ORS 279B.230(1).
- (7) All subject employers working under the Contractor are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126. ORS 279B.230(2).
- (8) Contractor shall pay employees for overtime work performed under the contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 USC 201, et seq). ORS 279B.235(3).
- (9) The Contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a

notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work. ORS 279B.235(2).

- (10) All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid. ORS 701.430.
- (11) The contract may be canceled at the election of City for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.
- (12) Contractor certifies compliance with all applicable Oregon tax laws, in accordance with ORS 305.385.
- (13) Contractor certifies that it has not discriminated against minorities, women or emerging small business enterprises in obtaining any required subcontractors. ORS 279A.110.
- (14) As used in this section, "nonresident contractor" means a contractor that has not paid unemployment taxes or income taxes in the state of Oregon during the 12 calendar months immediately preceding submission of the bid for the contract, does not have a business address in this state, and stated in the bid for the contract that it was not a "resident bidder" under ORS 279A.120. When a public contract is awarded to a nonresident contractor and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. ORS 279A.120.

EXHIBIT B
RATES/COSTS

EXHIBIT C
Request For Proposal